



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. Melissa Winblood
Assistant City Attorney
The City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR94-051

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ We assigned your request ID# 22866.

The El Paso City-County Health District (the "health district") has received two requests for information relating to certain health tests. Specifically, the requestor seeks "a copy of the preliminary report which has been delivered to Dr. Nickey by Dr. Thomas G. Boyce of the Center for Disease Control (CDC) of the U.S. Public Health Service in Atlanta[,] Georgia concerning the results of the CDC investigation of the Salmonella D outbreak which occurred in this County earlier this year." In addition, the requestor seeks "a summary of the health tests run on Chopsticks employees (e.g., stool samples, etc.) for inspection and duplication." You claim that section 552.101 of the Government Code, in conjunction with section 81.046(a) of the Health and Safety Code, excepts the requested Centers for Disease Control report from required public disclosure. In addition,

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

you claim that, to the extent that the requested summary exists, the same provisions except it from required public disclosure.²

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 81.046 of the Health and Safety Code provides in pertinent part:

(a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Open Records Act] and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

In Open Records Decision No. 577 (1990) at 5 (citing from the summary), this office determined that section 81.046 applies "to information relating to reportable diseases in the possession of a county health department, whether received as reports from health professionals or prepared in connection with the department's investigation of a disease or health condition."


You advise us that the Centers for Disease Control prepared the requested information and provided it to the city in response to a joint investigation of Salmonella D contamination. Section 81.046 clearly governs this information. Moreover, we conclude that the exceptions to confidentiality provided in subsections (c) and (d) of section 81.046 are inapplicable here. Accordingly, the health district must withhold the

²You suggest that information responsive to the second item does not exist and that retrieval of such information would require the city to perform general research for the requestor. The act does not require a governmental body to make available nonexistent information (Open Records Decision No. 362 (1983) at 2), to prepare information in a form requested by a member of the public (Attorney General Opinion JM-672 (1987) at 5 (citing Open Records Decision No. 145 (1976))); Open Records Decision No. 467 (1987) at 2 (citing Open Records Decision No. 145 (1976)), or to perform research (Open Records Decision No. 563 (1990) at 8). We note, however, that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975) at 3 (quoting Open Records Decision No. 31 (1974)). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982) at 1; 23 (1974) at 1-2. For example, where a requestor presents a governmental body with a broad request for information rather than for specific records, we have stated that the governmental body may advise the requestor of the types of information available so that he or she may properly narrow the request. Open Records Decision No. 31 (1974) at 4.

requested information, to the extent that it exists, under section 552.101 of the Government Code.³

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,


Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/GCK/rho

Enclosure: Submitted Documents

Ref.: ID# 22866
ID# 22883
ID# 22951
ID# 23014

cc: Mr. Robert G. Gilbert
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(w/o enclosure)

³You also ask whether this office construes the words "may not" in section 81.046 of the Health and Safety Code to grant a governmental body discretion to release information subject to that provision. Please note that this office is without authority to answer this question within the scope of an open records decision requested under section 552.301 of the Government Code. This office, however, may address this question within the scope of an attorney general opinion that a qualified requestor seeks under chapter 402 of the Government Code.